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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,771	12/12/2007	Philip Nigel Bartlett	P-7915-US	5575
49443	7590	03/07/2011	EXAMINER	
Pearl Cohen Zedek Latzer, LLP			ANTHONY, JULIAN	
1500 Broadway			ART UNIT	
12th Floor			PAPER NUMBER	
New York, NY 10036			1726	
			NOTIFICATION DATE	DELIVERY MODE
			03/07/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@pczlaw.com  
Arch-USPTO@pczlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,771	<b>Applicant(s)</b> BARTLETT ET AL.	
	<b>Examiner</b> JULIAN MERCADO	<b>Art Unit</b> 1726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### **Remarks**

This Office action is responsive to applicant's amendment filed on December 15, 2010.

Claims 1-17 are pending.

### **Claim Rejections - 35 USC § 112**

The rejection of claims 2-9 and 11-17 under 35 U.S.C. 112, second paragraph has been withdrawn.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakamoto et al. (U.S. Pat. 6,153,334) in view of Ebihara et al. (U.S. Pat. 6,331,367)

The rejection is maintained for the reasons of record. The examiner notes that the amendment to the present claims is submitted in response to the 35 U.S.C. 112, second paragraph rejection (now withdrawn). The scope of the present claims is otherwise the same as originally filed.

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Applicant's arguments filed with the present amendment have been fully considered, however these arguments are not found persuasive for the following reasons:

Applicant's assertion that the claimed periodic arrangement of substantially uniformly sized pores being materials which are clearly explained in the specification as being 1) produced by a liquid crystal templating process, 2) which are monolithic in nature and 3) which contain long-range regular arrangement of pores having defined topology are not persuasive, as these limitations are not positively recited anywhere the claims. Applicant is reminded that reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is quite different from reading limitations of the specification into a claim. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) To this extent, the features of the claimed periodic arrangement of substantially uniformly sized pores as explained in the specification have not been imported into the claims.

Applicant submits that that Sakamoto et al. contains no disclosure whatsoever of a "periodic arrangement of substantially uniformly sized pores" because Sakamoto et al. relates to a completely different type of material. Sakamoto et al. is said to disclose materials that are 1) particulate, 2) having porosity which results from grain boundaries and 3) having particles which are solid, all of which are alleged to be part of a completely different type of material, as compared to the film-type materials according to the present invention. In a similar vein, Ebihara et al. is said to relate to 1) particulate materials rather than films being 2) merely porous on the particle surfaces which are internally solid. In reply, these arguments are not persuasive as it is asserted that the claims are entirely silent on a film-type material. Thus, any arguments drawn to particulate vs. film-type, porosity and solid particles are not found persuasive as there is

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no patentable basis for any distinctions of this type in the scope of the claims. The assertion that Ebihara et al. is non-homogenous and nickel-rich at the particle surfaces is noted. This assertion is not entirely understood; even if Ebihara et al. is characterized as such, the scope of the present claims do not preclude non-homogeneity or particles which are nickel-rich on its surfaces.

Applicant submits that Sakamoto et al. fails to disclose nickel metal having any kind of porous structure. This argument is not persuasive, as the claims merely recite the electrodes to comprise nickel and are entirely silent on nickel metal. To this end, Sakamoto et al. is maintained to teach nickel in the form of nickel hydroxide, and nickel in the form of a nickel porous body.

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

/Julian Mercado/  
Examiner, Art Unit 1726

/Patrick Joseph Ryan/

Supervisory Patent Examiner, Art Unit 1726